In the High Court Of Uttaranchal, At Nainital
Criminal Misc. Application No. 397 of 2006

Subodh Kumar Kapoor S/O Late Kewal Kishan Kapoor,
Proprietor of M/Babbal Video Library,
R/o Ali Niwas Kuldi Bazar, Mussoorie,
P.S. Mussoorie, District Dehradun --- Applicant.

Vs.

State of Uttaranchal through Principal
Secretary of Homes, Dehradun --Respondent.

Sri Sandeep Tandon, Advocate for the applicant.
Sri Amit Bhatt, learned A.G.A.

Hon'ble B.C. Kandpal, J.

By means of this petition, the order dated 4-1-1992, passed by Chief Judicial Magistrate, Dehradun in criminal case No. 8 of 1992, State Versus Smt. Jasminder Kaur and others, U/Ss 63, 65, 68-A of Copyright Act and Section 5/7 Cinematography Act, has been challenged. The charge sheet submitted by the police in case crime No. 228/1991 as well as the entire proceeding of criminal case No. 8/1992 has also been sought to be quashed.

2- The facts, as found from the material available on the record and not in dispute, are that the petitioner had kept in the shape of various cassettes of the Hindi cinematograph films exhibiting the same either for hire or sale to the customers.

3- Heard learned counsel for the petitioner, learned A.G.A. and perused the record.

4- The question in the case is whether the petitioner has committed infringement of a Copyright or deemed infringement thereof. Section 2 (m) (ii) of Copyright Act (hereinafter referred as 'the Act') defines "infringing copy" to mean, in relation to a cinematographic film, a copy of the film made on any medium by any means.

Section 3 of 'the Act' defines 'publication' to mean making a work available to the public by issue of copies or by communicating the work to the public.

5- Section-4 of 'the Act' envisages that when work is not deemed to be published or performed in public, without the licence of the owner of the copyright. The permission of the owner for publication is mandatory when it is sought to be brought home to the person violating the publication or performed in public.

6- Section-51 of 'the Act' further provides, among other things, that a copyright in a work shall be deemed to be infringed when any person makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire any infringing copies of the work.

7- Section-52-A of 'the Act' deals with particulars to be included in sound recordings and video films. Sub-section (2) of the aforesaid Section provides that-

'no person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:-

(a) if such work is cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under section 5-A of that Act respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he obtained the necessary licence or consent from the owner of the copyright in such work of making such video film; and

(c) the name and address of the owner for the copyright in such work."

8- Section-63 of 'the Act' provides for penalty for the offences of infringement of copyright or other rights conferred by this Act.

9- Further Section 68-A of 'the Act' provides for penalty for contravention of Section 52-A of 'the Act' and it reads that –' any person who publishes a sound recording or a video film in contravention of the provisions of Section 52-A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.'

10- A reading of the aforesaid provisions indicate that infringement of a copyright or deemed infringement of a copyright or publication of a work without the permission of the owner are offences under the Act. The construction of Sections 52-A, 51, 63 and 68-A of 'the Act' should be read together and it would be further profitable to read the relevant provisions of the Cinematograph Act, 1952. Section 2(c) Cinematograph Act defines 'cinematograph' to include any apparatus for the representation of moving pictures or series of pictures. Section 2 (dd) of Cinematograph Act defines 'films' to mean a cinematograph film. The question therefore is whether video film is a cinematograph?. It is settled view that video tapes come within the expression 'cinematograph' in view of the extended definition in Section 2(c) which includes apparatus for the representation of moving picture or series of pictures as copy of the view should be created in respect of a cinematograph under the Cinematograph Act which gives protection to the purchasers of the cinematograph if they are registered under Chapter X of the Act.

11- Learned counsel for the petitioner has stated before me that the provisions of Section 52-A and

Section 68-A of 'the Act' are not attracted in this case. Therefore the charge sheet filed against the petitioner is liable to be quashed.

12- In view of the provisions of the Copyright Act as well as Cinematograph Act, discussed in the foregoing paragraphs, I am of the view that the prima facie case is made out at this stage. I do not find any serious miscarriage of justice and abuse of the process of the court in the instant case. It is also not a case where mandatory provisions of law have not been complied with and this court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the subordinate court while passing the order dated 4.1.1992 contained in Annexure- 14 to this petition.

13- The power U/S 482 Cr.P.C. should not be exercised by this court to stifle a legitimate prosecution and I am of the view that in this case the entire facts are extremely incomplete and hazy, therefore, I am not supposed to give any premature decision as the evidence has not yet been collected and produced before the court below. Therefore, the issues involved in the instant case cannot be seen in their true perspective without having sufficient material.

14- There is no material to show that the complaint is malafide, frivolous or vexatious. Therefore it would not be proper on my part to assume the role of a trial court and embark upon the enquiry as to the reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence.

15- The petition lacks merit and is liable to be dismissed.

16- Accordingly the petition is dismissed. The stay order dated 21-6-2006 stands vacated.

17- However, the petitioner is at liberty to raise the plea as to the applicability of the Sections under which

charge sheet has been submitted against him, before the trial Judge at the appropriate stage.

(B.C. Kandpal, J.)

Dated: 10-7-2006
ISB